



October 8, 2001

Ms. Margaret A. Roll  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2001-4530

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152868.

The Texas Department of Human Services (the "department") received a request for information relating to a named individual's application for and receipt of Temporary Assistance to Needy Families ("TANF"), Medicaid, and Food Stamps. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted. We also received and have reviewed the requestor's comments. *See* Gov't Code § 552.304 (providing that interested person may submit arguments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.108 of the Government Code, the "law enforcement exception," excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform this office that the requested information pertains to a pending criminal prosecution. You further inform us that the prosecutor has asked the department not to release the information. You provided a copy of the prosecutor's letter to that effect. Based on your representations, we find that the release of the requested information would interfere

with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 372 at 4 (1983) (stating that law enforcement exception may be invoked by any proper custodian of information relating to an incident allegedly involving criminal conduct that remains under active investigation or prosecution).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) requires the release of the types of information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Basic information under section 552.108(c) ordinarily includes the identity of a person accused of committing a crime. Basic information may be withheld from disclosure only upon a showing of special circumstances.

In this instance, we must consider whether the department must withhold the identity of the accused person under section 552.101 of the Government Code.<sup>1</sup> You inform this office that the pending criminal case involves alleged overpayments of benefits to one of the department's clients under the TANF, Medicaid, and Food Stamp programs. You contend that information relating to this individual is confidential under section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code.<sup>2</sup> You point out that these statutes require the department to restrict the disclosure of information concerning applicants for and recipients of public assistance to purposes directly connected with the administration of the assistance programs. You argue that the department cannot waive sections 12.003 and 21.012. You concede, however, that the requestor provided the department with a written authorization to release information relating to its client. We note that under subchapter B of chapter 40, Texas Administrative Code, the department is not prohibited from releasing information relating to one of its clients, if the department

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

<sup>2</sup>Section 552.101 protects information that other statutes make confidential. Section 12.003 of the Human Resources Code provides in relevant part:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a); see also *id.* § 21.012; Open Records Decision No. 584 at 3 (1991).

is provided with proper written authorization to do so. *See* 40 T.A.C. §§ 71.4(e), .12(h). Accordingly, we conclude that in this specific instance, the department is not required to withhold the identity of its client under sections 12.003 and 21.012 of the Human Resources Code. Therefore, the department must include this information in the basic information that the department must release under section 552.108(c) of the Government Code. The department may withhold the rest of the requested information under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

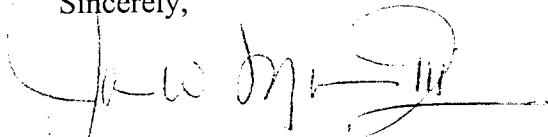
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 152868

Enc: Submitted documents

c: Ms. Renee Trevino  
Texas Rural Legal Aid, Inc.  
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(w/o enclosures)